

SEP 28 2010

JULIA C. DUNLEY, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

**DONALD WAYNE SHIPE,**

**Petitioner,**

**v.**

**TRACY RAY, WARDEN,**

**Respondent.**

)  
) **Civil Action No. 7:09-cv-00454**  
)

) **FINAL ORDER**  
)

) **By: Samuel G. Wilson**  
)

) **United States District Judge**

In accordance with the Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that Shipe's motion to amend (Docket No. 14) is **GRANTED** and his petition shall be considered as amended; respondent's motion to dismiss (Docket No. 3) is **GRANTED**; and the above referenced 28 U.S.C. § 2254 petition is **DISMISSED** and this action is **STRICKEN** from the active docket of the court.

Further, finding that Shipe has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(1), a certificate of appealability is **DENIED**.

The clerk is directed to send copies of this Order and the accompanying Memorandum Opinion to petitioner and counsel for respondent.

**ENTER:** This 28<sup>th</sup> of September, 2010.

*[Signature]*  
\_\_\_\_\_  
United States District Judge